IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 24TH NOVEMBER 2006 / 3RD AGRAHAYANA 1928

Crl.MC.No. 2584 of 2006()

ST.1918/2004 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOZHIKODE

.....

PETITIONER: ACCUSED

P.U.RUKHIYA, D/O. HUSSAIN,
TEACHER, ALP SCHOOL, AMBAYATHONDU,
THAMARASSERY.

BY ADV. SMT.SREEKALA KRISHNADAS

RESPONDENTS: COMPLAINANT/STATE

---

1. LORD KRISHNA BANK,
KOZHIKODE BRANCH, REPRESENTED BY ITS
BRANCH MANAGER.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 24/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2584 of 2006

Dated this the 24th day of November 2006

O R D E R

The petitioner, a woman, faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. The dishonour of the cheque took place as early as on 26/07/2004. The prosecution has been initiated. The petitioner has already entered appearance before the learned Magistrate. Proceedings are continuing. The petitioner has come to this court now with the prayer that the proceedings initiated against her may be quashed invoking the powers under Section 482 Cr.P.C.

2. What are the grounds? The only contention urged is that subsequently, by resort to revenue recovery proceedings, a portion of the amount has already been recovered by the complainant. The complainant has also initiated civil proceedings for recovery of amount on the same course of action. Revenue recovery proceedings are still continuing. These are the circumstances which are pressed into service to justify the prayer for quashing of the proceedings. I am unable to agree with the learned counsel for the petitioner. On the arguments raised, there is no case made out for quashing of proceedings. Subsequent payments, after the date of alleged

commission of the offence cannot certainly absolve the indictee of culpable liability under Section 138 of the N.I.Act. Certainly, when the court considers issue of direction for payment of compensation, she can substantiate her contentions that payments have been made towards the liability and only the balance is liable to be paid. If substantial portion of the amount has been paid, that can also be pressed into service to claim mitigation on the question of sentence. The liability under Section 138 of the N.I.Act is not in any way altered because the subsequent payment of the amount due under the cheque.

3. I do not, in these circumstances, find any merit in the prayer for quashing of proceedings. The challenge raised must hence fail.

4. In the result, this Crl.M.C is dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006